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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 537

EASTERN SUGAR ASSOCIATES,
Petitioners,

—against—

THE PEOPLE OF PUERTO RICO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable the Chief Justice and Associate Justices of the United States:

Trustees, known as Eastern Sugar Associates, defendants in the above-entitled action, respectfully pray the issuance of a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit to review an order and decision of the Circuit Court of Appeals for the First Circuit rendered herein June 28, 1946 (R. pp. 89-103).

Statement of Matter Involved

This is a condemnation proceeding which was commenced in the District Court of the Judicial District of Humacao, Puerto Rico and thereafter removed to the United States District Court for the District of Puerto Rico (Order, R. 51). The suit was brought by respondent,

for and on behalf of the "Land Authority of Puerto Rico", an entity created by Act No. 26 of the Legislative Assembly of Puerto Rico, approved April 12, 1941, (Session Laws of Puerto Rico, 1941, First Reg. Sess. 15th Legislature, No. 26), known as the "Land Law". It sought condemnation of 3,160.6 acres ("cuerdas") of agricultural land belonging to Eastern Sugar Associates and presently devoted to the raising of sugar cane and cattle (Stipulation, R. 54). This property is located on the Island of Vieques, a municipality of Puerto Rico (R. 2).

This petition seeks review of a Circuit Court decision which sustained the condemnation, and in so doing, departed from the rule in *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 79-80. It presents a question of the greatest importance not only to the territory of Puerto Rico but the entire United States. That question is, whether a legislative program which has as its declared purpose the complete socialization of the agricultural economy, as does the Land Law, meets the requirements of the Federal Constitution and §2 of the Organic Act of Puerto Rico (39 Stat. 951; 48 U. S. C. A. §737). Assuming that it does not, as the United States District Court for the District of Puerto Rico held in this case, (R. 77, 79 and 83), there is also the fundamental question left open, or at least in serious doubt, by *United States ex. rel. T. V. A.* v. *Welch*, U. S. , 90 L. Ed. 686 (March 25, 1946); namely, whether the determination of a legislature, or its authorized agency, as to "what type of taking is for a public use" is subject to judicial review, or is unassailable and "could 'not be set aside by a court'" (90 L. Ed. at 689, 691, 692; see also R. 77 and 97).

The petition of condemnation alleges as the purposes for which the defendants' lands are sought to be condemned, the following (R. 3):

> "3. The Land Authority desires to condemn the said lands to carry out all of the objects or purposes of the Land Law of Puerto Rico in force, that is to say:
>
> (a) Distribution and transfer of lands to a number of 'squatters' ('agregados') at the rate of one parcel of not less than one fourth of a cuerda nor more than three cuerdas per family, in which said 'squatters' may erect their dwellings, in harmony with the provisions of Title Fifth of the said Land Law.
>
> (b) Distribution and operation of lands in individual farms whose area shall fluctuate between five (5) and twenty-five (25) cuerdas, in harmony with the provisions of Title 25 and following of the said Land Law.
>
> (c) Establishment of farms of proportional benefit whose area shall fluctuate between one hundred (100) and five hundred (500) acres to be dedicated principally to the planting and cultivation of sugar cane in harmony with the provisions of Title Fifth of the said Land Law and Law numbered 90 approved May 11, 1944."

According to the Land Law, the Authority has "power to sell, alienate, cede or transfer the land acquired to individuals and agricultural cooperatives in accordance with the provisions of this Act and for the purposes hereof effective" (*sic*, Sec. 24). In the case of disposition of lands to *agregados* as alleged in paragraph "3(a)" of the condemnation petition, the transfer shall be made

"gratuitously" (Land Law, Sec. 76), and of the larger parcels of 5 to 25 acres, referred to in paragraph "3(b)", on a 40 year payment basis (Land Law, Sec. 25).

In addition to the three purposes contained in the Land Law itself, the Land Authority is authorized by the separate statute, Act. No. 90 of May 11, 1944, (Session Laws of Puerto Rico, 1944, Fourth Reg. Sess. 15th Legislature), to acquire and operate for its own account and profit these particular lands here sought to be condemned, which is in effect a fourth purpose for which they may be used (R. 94).

The legislature of Puerto Rico in adopting the Land Law states that it is "To promote the welfare of the inhabitants of Puerto Rico * * * by providing an improved distribution of agricultural wealth." (Title of Land Law). It goes on to declare it to be "the policy of the People of Puerto Rico that finally each person who tills the land shall be the owner of that land which supports him." (Statement of Motives, Land Law).

In acquiring land to dispose of for the purposes specified in the Land Law, the Authority, which has "juridical personality" separate and apart from the government of Puerto Rico, is granted unlimited power, subject to no review, to select any real property, regardless of size, of any private individual, anywhere throughout the entire island of Puerto Rico (Land Law, Sec. 8, 11).

After the present proceeding was removed to the United States District Court for the District of Puerto Rico, the defendants answered the petition (R. 58-63) and moved simultaneously for dismissal thereof (R. 56, 57), on the grounds, *inter alia*, that the proposed condemnation of defendants' property was not for "public use", was a taking

without "due process of law", and denied to defendants the "equal protection of the laws", as required by the Fifth and Fourteenth Amendments of the Federal Constitution and Section 2 of the Organic Act of Puerto Rico (48 USCA §737).

The United States District Court issued a restraining order against interference by the Land Authority with defendants' possession and title (R. 52, 53), and as heretofore indicated, sustained defendants' motion for dismissal of the condemnation (R. 83). However, it found unnecessary to determine more than that this taking was not for a "public use", that it did not meet the requirement of "due process of law" and that the Court had power to review and to declare unconstitutional the legislative action (R. 77, 79, 82).

The decision of the Circuit Court of Appeals of the First Circuit, which is here sought to be reviewed, assumed the power of judicial review (R. 97), passed upon all the Federal questions presented in this case and held unanimously that the condemnation met the requirements of the Federal Constitution (R. 100), and thus approved transfer of title to the Land Authority of Puerto Rico.

In addition to procuring land from private individuals throughout the Island of Puerto Rico as it seeks to do in the present case, the Authority is empowered by the Land Law to acquire for the same purposes, the lands of *corporations* in excess of 500 acres which are held in violation of the Joint Resolution of Congress No. 23 of May 1, 1900, (31 Stat. 716, 48 U. S. C. A. §752) popularly referred to as "the 500 acre law" (Land Law, Sec. 14).

It should be emphasized, however, that the present proceeding does not involve an acquisition from this source

(R. 82). Indeed, there is no contention that the Petitioners have violated any statute limiting the ownership of land (Condemnation Petition, R. 2). In fact, the case is almost the reverse, for it is petitioner's position, expressed as a further ground of its motion for dismissal (R. 56-7) that the Land Authority has all the essential attributes of a corporation and as such is violating both the intent and the letter of the Joint Resolution of Congress just as much as any other corporation would be, if permitted to enter upon and control the agricultural lands which are sought in these proceedings (R. 57). If "it would not be in the interest of a million people crowded upon a territory of 100 by 40 miles in extent, to have one corporation own all or substantially all the land", as was stated in the Congressional debates when the "500 acre law" was enacted (33 Cong. Rec. 4620-1), such a condition is nevertheless the almost inevitable result of the Land Law and its vehicle, the Land Authority.

However, the basic questions presented are whether the Land Law meets the "due process" and "equal protection" requirements of the Federal Constitution and the Organic Act, whether "the appellees' land is sought to be taken for a public use" (C.C.A. Opinion R. p. 94), and if not, whether the legislative finding in this regard is subject to judicial review.

Jurisdictional Statement

The jurisdiction of this Court is invoked under §240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U.S.C.A. § 347. Application is made pursuant to Rule 38, par. 5, subd. (b) of the rules of this

Court, on the ground that there are presented here important questions of Federal law with regard to which review should be granted by this Court in the exercise of sound judicial discretion.

The statutes which give rise to these questions are an integral part of the "Matter Involved". Appropriate summary of their pertinent provisions and citations have been included above under that heading.

The decision and order of the Circuit Court of Appeals herein were filed on June 28, 1946 (R. 102, 103). The order for mandate was entered on the same date (R. 103). On July 8, 1946 the mandate was stayed until further order of the Circuit Court, pending this application for a writ of certiorari.

Questions Presented

1. Assuming that economic and social conditions in Puerto Rico are such as to warrant Government action and assuming that the Insular Legislature has power to enact laws directed to remedying such condition, does the action which the Legislature has taken in adopting the Land Law and Act 90 of May 11, 1944, meet the "public use", "due process of law" and "equal protection" requirements of the Federal Constitution and of the Organic Act of Puerto Rico, in that

a. the legislation authorizes the condemnation of petitioners' lands for "transfer * * * to individuals and agricultural cooperatives", so that those individuals may possess "the piece of land that encloses their homes" and reap the rewards of ownership of agricultural land which now belong to petitioners?

b. the legislation authorizes condemnation of petitioners' lands so that the state, either directly or through a public or quasi-public organization, the Land Authority, may engage for its own account and profit in the same private enterprise now conducted by petitioners?

c. petitioners' lands are sought to be taken for this program, while other citizens whose lands are devoted to the same uses may under the Land Law remain undisturbed in their ownership?

2. Assuming a negative answer to question "1", is the legislative action subject to judicial review?

3. Does the Joint Resolution of Congress No. 23 of May 1, 1900, limiting the ownership and control of agricultural land by "every corporation" in Puerto Rico to 500 acres, apply to the Land Authority created by the Legislative Assembly of Puerto Rico?

Reasons for Allowing the Writ

1. In holding that the Land Law and Act No. 90 of May 11, 1944 do not violate the Federal Constitution and § 2 of the Organic Act of Puerto Rico, the Circuit Court departed from the rule stated in *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 79-80; *Hairston* v. *Danville & Western Railway Co.*, 208 U. S. 598, 605-606.

2. This proceeding and petition present a question of national significance. In using the power of eminent domain, not only to carry out a program of re-distribution of agricultural wealth, but to actually take over and operate

petitioners' private agricultural lands for the account and profit of the state, the action of the Insular Legislature presents a situation which goes far beyond any case ever presented in this Court. Indeed, this proceeding raises squarely the issue whether there is any limitation on the legislature of Puerto Rico, or for that matter on the legislature of any state of the Union, to condemn private property for any ends which the *legislature* in good faith sees fit.

3. It is a Federal question of first importance in future condemnation proceedings throughout the country whether the right to judicial review of legislative action so clearly announced in *Cincinnati* v. *Vester,* 281 U. S. 439, 446 and *Rindge Co.* v. *Los Angeles,* 262 U. S. 700, 705, has been altered by this Court's decision in *United States, ex rel. T. V. A.* v. *Welch, et al.,* U. S. , 90 L. Ed. 686. The doubt which the *Welch* case cast upon this former rule is indicated by the opinion of the Circuit Court in the instant case wherein it was stated (R. 97):

> "But at the threshold of our consideration of this question, we come face to face with the question upon which the Supreme Court was apparently divided in *United States, ex rel. Tennessee Valley Authority* v. *Welch et al.,* decided March 25, 1946, that is, the question whether a legislative decision that a taking is for a public use is subject to judicial review."

4. Necessarily appropriate to a consideration of this program of agrarian socialization is a determination by this Court of the equally important issue whether the Land Authority in carrying out these far-reaching acquisitions is not itself coming squarely within the prohibition on

large land holdings which was sought to be prevented by *Congress,* the "ultimate legislative guardian of the Island's welfare", (*Puerto Rico* v. *Rubert Hermanis, Inc.,* 309 U. S. 543, 549; Joint Resolution of Congress Act No. 23 of May 1, 1900).

Prayer

For the foregoing reasons, which are further developed in the accompanying brief, your petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the First Circuit commanding said Court to certify and send to this Court on a date to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this case, to the end that this case may be reviewed and determined by this Court; that the order and decision of the Circuit Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may be proper.

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September 25, 1946.

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the United States District Court for the District of Puerto Rico, granting dismissal of this condemnation proceeding (R. 73-82) is not reported. The opinion of the Circuit Court of Appeals for the First Circuit, reversing the District Court (R. 89-102) is reported in 156 F. (2nd) 316.

Jurisdiction of this Court

This has already been stated in the preceding Petition under the heading "Jurisdictional Statement".

Statement of the Case

This has already been stated in the preceding Petition under "Statement of Matter Involved".

Specifications of Errors to be Urged

1. The Circuit Court of Appeals for the First Circuit erred in denying to petitioners the protection of their rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and by §2 of the Organic Act of Puerto Rico, in that

a. it approved the taking of petitioner's property for transfer to other private individuals for their independent and exclusive use;

b. it approved the taking of petitioner's property in order that other private individuals or the Land Authority may engage for their own account and profit in the same private enterprise now conducted by petitioners; and

c. it used as the only test of the constitutionality of this program "whether the means chosen are reasonably calculated to cure the evils reasonably believed by the legislature to exist" (R. 100-101) and ignored the rights of individuals defined by the rule stated in *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 79-80 and *Hairston* v. *Danville & Western Railway Co.*, 208 U. S. 598, 605-606.

2. The Circuit Court was also in error in failing *affirmatively* to hold that petitioners are entitled to judicial review of the action of the Insular Legislature.

3. The Circuit Court likewise erred in not holding that the Land Authority of Puerto Rico lacks capacity to acquire lands in excess of 500 acres.

ARGUMENT

Preliminary Statement

Two directly conflicting concepts are presented by the legislation under examination: One is the declared fundamental right of a person to own his own home and bargain his labor freely ("Statement of Motives"). Purporting to accomplish this end, the legislation proposes to condemn the property of those who have and divide it among those

who have not. The other is that the state, for the avowed purpose of the public welfare may condemn private property to be operated by it, through a public or quasi-public corporation, for its own account and profit or for the profit of selected persons, (Land Law, Sec. 24, 25; Act No. 90 of May 11, 1944).

Since this second objective of the Legislature is apparently directed to the taking over and operating by the Government of all private agricultural enterprise for its own account, either directly or indirectly, it is the very antithesis of the individual freedom for which the legislation also purports to provide. The mere statement of these conflicting motives calls for an examination by this Court to determine whether the purposes and the means whereby such purposes are sought to be effectuated do not exceed the legislative power.

Two tendencies in recent years have narrowed the protection at one time afforded by the courts to private ownership of property: one is a broadening of the concept of what is a public purpose, and the other is a narrowing of the extent to which courts may go in examining the announced determination by the legislative branch that the public welfare will be promoted by the acquiring of private property against the will of the owner.

This case presents the question whether there is any limit to that trend and, if so, where.

Surely, if freedom of the individual is to survive, there must be some point beyond which his property, as well as his life and liberty is inviolate. Indeed, the Fifth and Fourteenth Amendments, the principles of both of which are directly applicable, make no distinction between life, liberty and property. No person may be deprived of any one of

them without due process of law. If there is any difference in the extent to which one or another of these fundamental rights will be protected, it lies in a difference in what is due process as applied to each of them.

This Court has never departed from the principle, "known to the common law before Magna Charta" and "embodied in that charter" that due process requires the application of "the law of the land" to property rights as well as to the rights of life and liberty. *Ochoa* v. *Hernandez,* 230 U. S. 139, 161.

Moreover, this Court has jealously guarded its power to determine the circumstances under which life and liberty of the individual may be impaired for an alleged benefit to the community as a whole, and has refused to accept the legislative judgment as final as to whether the public welfare will be promoted by their limitation. *Screws* v. *United States,* 325 U. S. 91; *Marsh* v. *Alabama,* 326 U. S. 501. It has never held that its duty is any less with respect to property rights. Nevertheless, the proposition has been urged, and upheld in this case by the Court below (R. 100-101) that the judgment of the legislative branch on this subject is for all practical purposes final in so far as the limitation of property rights is concerned.

Petitioners maintain that this implies a difference in the character of protection accorded to the right of ownership which is not admissible under the Fifth and Fourteenth Amendments, and is in direct conflict with the controlling decisions of this Court. The ultimate effect of the opinion of the Circuit Court is that the state may with impunity not only take away the property of the individual and either give it to others or operate it for its own profit, but may also in a particular case take away the liberty of the indi-

vidual to live a private life, both of which are protected by the Constitution. May the mere declaration of the Legislature that this will promote the public welfare justify the taking of private property and must it be so accepted by the courts? This Court has never so held.

POINT I

The Circuit Court Erred in Holding the Condemnation of Petitioners' Property to be for a "Public Use."

A. The Test Used By the Court was Inadequate and Contrary to Precedent.

The Circuit Court held that it could not "strike down the legislative program for the Island of Vieques as in violation of the appellees' right to due process of law" (R. 100) because

1. the Court would take judicial notice that social and economic conditions in Puerto Rico and Vieques were such as to warrant legislative action, and

2. this legislation "embodied means reasonably calculated to deal with these problems" (R. 101).

It is petitioners' position that this test which the Circuit Court applied is inadequate, in that it would sustain any legislation purporting to deal effectively with a recognized problem. It thus completely begs the question of constitutionality.

For example, if the existence of evils and the effectiveness of the remedy is the sole test, as the Circuit Court made it in this case, a taking (with compensation) of all property in the Territory, personal as well as real, for re-divi-

sion among its citizens could be sustained. While such a method might be most effective in dealing with the evil of extreme poverty among the donees, no one could reasonably contend that it met the requirements of *this* Constitution. Minimum Wage Laws, and Housing Authority Laws under appropriate circumstances are constitutional means of affording economic relief. The question here is whether the means employed by this legislature similarly meet those requirements, and not simply whether the means are *effective* to remedy the conditions involved.

In employing the limited test, which the Circuit Court did, it relied largely (R. 100) upon the *dissenting* opinion of Mr. Justice Brandeis in *New State Ice Co.* v. *Liebman,* 285 U. S. 262 at 280, 286-7, which it quoted from in part as follows:

> "Our function is only to determine the reasonableness of the legislature's belief in the existence of evils and in the effectiveness of the remedy provided."

The *Liebman* case did not concern condemnation, the taking of property against the will of the owner, nor was this dissenting opinion directed to any consideration thereof. The sole question was the extent to which the Court could go in reviewing a statute requiring the licensing of those engaged in the manufacture and sale of ice.

That Mr. Justice Brandeis' views were not directed to condemnation is conclusively indicated by the fact that in a later decision, when writing for a unanimous court, he himself stated the rule for which petitioners contend. That decision, *Thompson* v. *Consolidated Gas Co.,* 300 U. S. 55, 79-80, was strenuously urged upon the Circuit Court but was left unmentioned in its opinion.

In the *Thompson* case the Railroad Commission of Texas had limited the production of natural gas by certain well owners for the purpose of keeping others in business. The object of the Commission's order was to compel the more fortunate operators, who possessed pipelines, to carry to market the product of those who did not have such facilities.

This Court quoted with approval a finding of the District Court that the effect of the action was "In short to compel complainants to afford markets to those having none" (300 U. S. at 78). It went on to state, citing condemnation cases in support thereof (300 U. S. 80):

> "this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. See Hairston v. Danville & Western Ry. Co., 208 U. S. 598, 605, 606; Rindge Co. v. County of Los Angeles, 262 U. S. 700, 705."

B. The Purposes of This Condemnation Are Not Public.

The Circuit Court held quite properly that petitioners' lands may eventually be put "to any one or all of the four uses" set forth, above at pp. 3-4 of this petition, and "Therefore if any one of those uses, each considered, however, as part of a broad, integrated program of agrarian reform as will be pointed out hereafter, is not public, the petition was properly dismissed" (R. 94).

The Circuit Court, however, deviated from this original pronouncement, when it later took the position that since "Each use plays a part in a comprehensive program of social and economic reform", there was "no basis for analyzing each proposed use separately" (R. 98).

In this, petitioner respectfully submits the Circuit Court erred. In the first place, it was in error in relying on the expression "single integrated effort", as used in *U. S. Ex rel. T. V. A.* v. *Welch, et al.,* U. S. 90 L. Ed. 686, for in that case the expression was directed to the entire Tennessee Valley development, the public purpose of which was in no way questioned. Here the "single integrated effort", if legislation with such diametrically opposed objectives can be called "an integrated effort", is itself drawn in question. And this leads to the second error of the Circuit Court in declining to consider the effect of the separate uses to which petitioners' lands may be put. Because these uses evidence such fundamental conflict in objective, there is in fact no central purpose capable of justifying all.

The first contemplates a transfer of the land condemned to a class of private individuals in separate parcels for their respective independent and exclusive uses, namely, the possession of the land that incloses each of their dwellings (Sec. 74).

The second and third, while similar to each other, are wholly different from either the first or the fourth. They envisage the operation of petitioners' lands for similar agricultural purposes, but for the account and profit of other private persons (Sec. 25, 64).

And the fourth use, in turn, differs fundamentally from the first three in that the lands will be operated as they are now, but for the account and profit of the government (Act No. 90 of May 11, 1944; see R. 91).

The fatal defect in the first use to which these lands may be put lies in the fact that it is to be by private persons, singly, for their individual and exclusive benefit.

Thus, it is not a case such as *Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112; *Clark* v. *Nash,* 198 U. S. 361; *Mt. Vernon Cotton Co.* v. *Alabama Power,* 240 U. S. 30, *Rindge Company* v. *Los Angeles,* 262 U. S. 700, relied upon by the Circuit Court (R. 98-99), which hold merely that "it is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in any improvement in order to constitute a public use" (262 U. S. at 707).

In the case at bar the first use is not of a "community" nature in any respect, but for the sole enjoyment and benefit of private citizens in their individual capacities.

The Circuit Court conceded "that a taking of property from one, for the purpose of transferring it to another, without anything more," does not conform to due process of law and pointed out that "some public benefit or advantage must accrue from the transfer and mere financial gain to the taker is not enough" (R. 99).

The only benefit which this first use could possibly have, is that accruing to private persons, singly and separately. Surely, public benefit cannot be found in the mere aggregation of separate individual uses, which taken themselves the Circuit Court concedes to be insufficient (R. 99).

The second and third uses fall squarely within the rule of *Thompson* v. *Consolidated Gas Co.,* 300 U. S. 55, 79-80. So far as the large proportional-profit farms are concerned (Land Law Sec. 64) the "use" is merely a transfer of the increments of ownership from one group of private individuals to another. In the *Thompson* case, it will be recalled, the Court specifically forbade compulsory transfer of the benefits of pipeline facilities from those who owned such facilities to those who did not.

If there is any "single integrated effort", to which these different uses are directed, as the Circuit Court held (erroneously we believe), it is the taking over and operation of all agricultural lands by the Government either for its own benefit or for disposition at its will. Ample evidence of this is found in the fourth enumerated use.

Even if it were a proper governmental function for an instrumentality of the state to engage in agricultural enterprise on lands which it acquired by *voluntary purchase and sale* (a proposition which we by no means concede), that still falls far short of sanctioning what is proposed here. When the state can use the supreme power of *eminent domain,* as it seeks to do in this case, to enter into agricultural pursuits by taking over private property already so utilized, the right to own property and the liberty to engage in free enterprise cease to exist. The case is all the clearer where an avowed purpose of the taking is to donate or transfer the land to other private persons, and where there is no showing that the present owners, as here, are not fulfilling in every respect their duty to the public.

It is not surprising that there is no precedent in this Court for such usurpation by legislative fiat.

POINT II

The Circuit Court Erred in Failing to Hold Affirmatively that Petitioners are Entitled to Judicial Review.

The Circuit Court merely assumed, *arguendo,* that petitioners were entitled to judicial review (R. 97). It is respectfully submitted that this Court should clarify the doubt which exists by reason of the decision in *U. S. ex rel. T. V. A.* v. *Welch,* U. S. , 90 L. Ed. 686, by holding that petitioners are entitled to judicial review of the action of the Puerto Rican legislature.

"Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to courts is committed the guardianship of deeply-cherished liberties." *Minersville School Dist.* v. *Gobitis,* 310 U. S. 586, 600.

POINT III

The Circuit Court Erred in Not Holding that the Land Authority of Puerto Rico Lacks Capacity to Acquire Lands in Excess of 500 Acres.

Petitioners contend that this condemnation must fail because the Land Authority, being a corporation engaged in agricultural, not only lacks capacity to own and control the 3160.6 acres of agricultural land which it seeks to condemn, but is actually barred therefrom.

The capacity of corporations to own agricultural land in Puerto Rico is limited by the Joint Resolution of Congress of May 1, 1900, which provides that "every corporation hereafter authorized to engaged in agriculture shall by its charter be restricted to the ownership and control of not to exceed 500 acres of land" (R. 102).

The Circuit Court decided that assuming that the Land Authority is a corporation and that it is authorized to engage in agriculture, still "from the wording of the provision * * * it was not intended to apply to governmental corporations created by the Insular Legislature to carry on a public function." (R. 102) Petitioners contend that no such view can possibly be derived from the wording or legislative history of the provision above quoted, and that the Circuit Court in so deciding failed to follow the express mandate of Congress as well as the applicable de-

cisions of this Court. *Nardone* v. *United States,* 302 U. S. 379; *School District* v. *Insurance Co.,* 103 U. S. 707.

POINT IV

Review of These Questions at the Present Time is of Utmost Importance.

It is as essential to the preservation of the petitioner's property rights, as it is important to the entire Territory of Puerto Rico that these questions be reviewed now.

Under the Land Law, title to property does not pass automatically with the filing of the petition, but the Land Authority may, as was done in this case (R. 33) file *ex parte* a Declaration of Taking, in which case it is provided that title passes and the authority may take possession, demolish any structures and construct buildings in advance of the determination of the compensation to be paid (Sec. 16, 17 and 21). The District Court of the Judicial District of Humacao, Puerto Rico, entered a judgment on the Declaration of Taking (R. 37-40) purporting to vest title in the Land Authority, *authorizing it to enter into possession* and directing the Registrar of Property to record its title in fee.

Entry by the Land Authority was only prevented by the restraining order granted by the United States District Court (R. 52). On the return of the mandate of the Circuit Court, which is presently stayed (R. 102-103), the United States District Court would have no other alternative than to dissolve the restraining order and permit the Land Authority to enter into possession, demolish improvements and record its title, leaving the only issue pending in the District Court, as limited by the opinion of the Circuit

Court (R. 100), the determination of the amount of the compensation to be paid.

Thus, it is of fundamental importance to the rights of the parties that these questions be determined now. *United States* v. *General Motors Corporation,* 323 U. S. 373, 377.

Furthermore, what remains to be done "could not remotely give rise to a federal question". *Radio Station WOW, Inc.* v. *Johnson,* 326 U. S. 120, 126, 127. Nor does Respondent differ in this view, for in its brief in the Circuit Court it stated:

> "Decision on this appeal of all questions going to the validity of the condemnation will, if in favor of the Government, permit its program to continue, leaving the amount of just compensation to be decided in the court below."

CONCLUSION

In view of the great importance of these issues, to the country and particularly to the citizens of Puerto Rico, and in view of the immediate necessity to the parties of a determination of these federal questions, it is respectfully submitted that this application should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 537

EASTERN SUGAR ASSOCIATES, PETITIONERS

v.

THE PEOPLE OF PUERTO RICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PEOPLE OF PUERTO RICO IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for Puerto Rico (R. 73–82) is not reported. The opinion of the Circuit Court of Appeals for the First Circuit (R. 89–102) is reported at 156 F. 2d 316.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 28, 1946 (R. 102–103). The petition for a writ of certiorari was filed September 25, 1946. The jurisdiction of this Court is invoked under the provisions of Section 240 (a)

of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the land here sought to be condemned by the People of Puerto Rico is being taken for a public use.

2. Whether the Land Authority of Puerto Rico can take title to land in excess of 500 acres.

STATUTES INVOLVED

The pertinent provisions of the United States and Puerto Rican statutes involved are set forth in the Appendix, *infra,* pp. 19–37.

STATEMENT

This proceeding was commenced when the Governor of Puerto Rico, "representing The People of Puerto Rico, in the name and on order of the Land Authority," filed a petition (R. 2–32) to condemn on the Island of Vieques, a municipality of Puerto Rico, 3,161.5 cuerdas[1] of land owned by petitioner, Eastern Sugar Associates, described as "an organization which characterizes itself as a Trust" (R. 1, 4). The petition named as defendants both Eastern Sugar Associates and The National City Bank of New York, the holder of a mortgage on these lands (R. 4–5).[2]

[1] A cuerda is equal to .9712 acre. 3,161.5 cuerdas is equal therefore to approximately 3,070.4 acres.

[2] The National City Bank of New York was an appellee in the Circuit Court but only Eastern Sugar Associates has petitioned for a writ of certiorari.

By Act No. 26, approved April 12, 1941, called the "Land Law of Puerto Rico" (Appendix, pp. 21–35), the "insular legislature launched a far-reaching program of agrarian reform" (R. 89). After a "Statement of Motives," the Act creates a board in the "nature of a governmental agency or instrumentality of The People of Puerto Rico" in the Department of Agriculture and Commerce, to be called the "Land Authority of Puerto Rico," "for the purpose of carrying out the agricultural policy of The People of Puerto Rico as determined in this Act, and to take the necessary action to put an end to the existing corporative latifundia in this Island, block its reappearance in the future, insure to individuals the conservation of their land, assist in the creation of new landowners, facilitate the utilization of land for the best public benefit under efficient and economic production plans; provide the means for the *agregados*[3] and slum dwellers to acquire parcels of land on which to build their homes, and to take all action leading to the most scientific, economic and efficient enjoyment of land by the people of Puerto Rico."

To "carry out the purposes" of the Act, the Land Authority is empowered by Section 14

[3] An *agregado*, frequently referred to in Puerto Rico as a "squatter," is defined in Section 78 of the Act as "any family head residing in the rural zone, whose home is erected on lands belonging to another person or to a private or public entity, and whose only means of livelihood is his labor for a wage."

(Appendix, pp. 31–32) to expropriate lands in excess of 500 acres held by "artificial persons,"[4] and to request the Insular Government to acquire on its behalf by eminent domain or purchase, "title to any real property or estate thereon" deemed necessary by the Authority to achieve its objectives (Section 11, Appendix, p. 30). The Act establishes the procedure to be followed in condemnation proceedings and provides for payment of "just compensation" for property so taken.

The Land Law, as amended, authorized the Land Authority to dispose of lands which it acquired for three purposes: (1) in small parcels of land, ranging from ¼ to 3 cuerdas, to individual *agregados* for the erection of their dwellings;[5] (2) in parcels of from 5 to 25 acres of land for the establishment of individual subsistence farms; and (3) in large parcels of from

[4] By Section 58 of the Act (Appendix, p. 33), the holding of land in excess of 500 acres by "any artificial person" is prohibited and that term is defined by Section 57 of the Act (Appendix, p. 33) as including "business trusts," "Massachusetts Trusts," and "common law trusts." The 500-acre restriction, originally imposed by Congress by Joint Resolution of May 1, 1900, 31 Stat. 715, 716 (Appendix, pp 19–20), and subsequently incorporated in Section 39 of the Organic Act, 39 Stat. 951, 964, 48 U. S. C. 752 (Appendix, pp 20–21), restricted corporations, both foreign and domestic, "to the ownership and control of not to exceed five hundred acres of land."

[5] The power of the Government of Puerto Rico to condemn land for this purpose was upheld by the Supreme Court of Puerto Rico in *McCormick* v. *Marrero*, 64 P. R. 260.

100 to 500 acres "to farmers, agronomists" or other qualified persons "with experience in agricultural management," for the operation of "proportional-profit" farms as described in the Act (Appendix, pp. 32, 34–35).

By Act No. 90, approved May 11, 1944, popularly known as the "Vieques Act" (Appendix, pp. 35–37), the Insular Legislature, following surveys by "special commissions appointed by the Governor of Puerto Rico and by the House of Representatives of Puerto Rico," made specific provision for the relief of the distressed conditions existing on the Islands of Vieques and Culebra, both municipalities of Puerto Rico and lying off its eastern shore. The Act directed the Land Authority to acquire "through purchase or condemnation proceedings" the "lands belonging to the Eastern Sugar Associates in the Island of Vieques, as well as any other lands in the Island of Vieques," to "establish the consequent organization of the same," and to "devote them principally to the planting of sugar cane and of any other products that may be necessary to develop in Vieques the sugar industry and the liquor industry."

On March 20, 1945, the condemnation petition herein (R. 2–32) was filed with the Insular District Court of the Judicial District of Humacao, along with a "Declaration of Taking" (R. 33–35) which recited that the People of Puerto Rico

had been requested to condemn for the "Land Authority" the described properties "under the authority of, and in conformity with," the Land Law, the Vieques Act, and other specified statutes relating to condemnation, "for the purpose of executing * * * works and projects for the public use and public utility" (R. 33). The petition prayed that a judgment be entered declaring that title to the described land had vested in the Land Authority from the date of the filing of the Declaration of Taking and that the court "determine and fix the sum which should be paid" by the Government "as just and reasonable compensation" for the property[6] (R. 5–6). The Insular District Court entered judgment vesting title in the Land Authority (R. 37–40).

At the request of each of the defendants, the cause was removed to the District Court of the United States for Puerto Rico on March 26, 1945 (R. 51). On March 28, 1945, on motion of petitioner, the District Court issued an order temporarily restraining the Land Authority "from interfering in any way with the possession and title of Eastern Sugar Associates to the said lands" (R. 52–53). The temporary restrain-

[6] The petition alleged that the sum of $270,326.33 constituted fair and just compensation for the described properties and that said sum proffered to and refused by Eastern Sugar Associates and The National City Bank had been deposited with the court (R. 3–5).

ing order was thereafter continued until further order of the court (R. 53–55).

On April 16, 1945, petitioner filed both a motion to dismiss the condemnation petition and an answer (R. 56–63). These pleadings charged, *inter alia,* that the taking of lands belonging to Eastern Sugar would violate due process of law since they were to be taken "for a use and purpose which is not a public use or purpose;" that the Land Law of Puerto Rico was invalid in so far as it authorized the taking; and that the Land Authority of Puerto Rico lacked legal capacity to take title to the lands sought to be condemned. On April 21, 1945, The National City Bank of New York answered with a general denial of the material allegations of the petition and a request that its mortgage lien be transferred to the compensation awarded in the event that judgment should be entered in favor of The People of Puerto Rico (R. 64–65).

After hearing arguments of counsel on Eastern Sugar's motion to dismiss, but taking no evidence, the District Court, on June 22, 1945, entered an order dismissing the condemnation petition and vacating the judgment of taking and order of possession entered by the Insular District Court (R. 83). In an accompanying opinion (R. 73–82), the District Court held that "the petition has failed to state a public use or purpose for

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which private property may be acquired by eminent domain" (R. 77) and did "not find it necessary to pass upon other grounds of the motion" to dismiss (R. 82).

On appeal to the Circuit Court of Appeals for the First Circuit, the order of the District Court was set aside and the case was remanded for further proceedings. The court found that the purpose for which the land was sought to be condemned constituted a public use. The court also held that the Land Authority of Puerto Rico is not prohibited from taking title to more than 500 acres of land.

ARGUMENT

1. As stated by the court below (R. 94), "the basic question presented is whether on the pleadings it can be said that the appellees' [petitioner's] land is sought to be taken for a public use." Petitioner, which "characterizes itself as a Trust" (R. 1) and is one of the largest landowners in Puerto Rico, holding some 31,002.28 acres of land [7] in the face of a Puerto Rican law restricting ownership by an artificial person to 500 acres of land (Appendix, p. 33, *infra*), contends that "the purposes of this condemnation are not public" (Pet. 17), and that "the test used by the court [below] was inadequate and contrary to precedent" (Pet. 15). We submit that the Circuit Court of Appeals was clearly correct in

[7] Office of Information for Puerto Rico pamphlet (1943) *Land and Liberty*, p. 20.

rejecting petitioner's argument and in holding that the land in question was to be taken for a public use.[8]

(a) The purpose for which the land was to be taken was a public one. The Land Law of Puerto Rico (Appendix, *infra,* pp. 21–35) represents an attempt by the Puerto Rican Legislature to deal with what is probably the Island's gravest economic problem, the agrarian one. Admittedly, Puerto Rico is a densely populated, agrarian community and the welfare of the Island as a whole depends upon the economic condition of the individual farmer. The consistent legislative policy accordingly has been to encourage wider distribution of the ownership and economic benefits of the land and to break up the large landed estates which tend to perpetuate themselves. It is obvious that a problem of this character presents a matter of the utmost public interest and that any taking of land tending to remedy the problem is a taking for public use.

That the Legislature of Puerto Rico recognized the public interest of the matter is amply demonstrated by the Statement of Motives appearing as a preamble to the Land Law of 1941. It said:

> that land concentration has caused in this Island a serious social situation by placing

[8] No question "with respect to the adequacy of the amount deposited to pay for the land involved" is presented at this stage of the proceedings (R. 94).

> the most valuable source of wealth under the control of large interests, among which absentee interests are conspicuous. The great masses of farmers and laborers are experiencing a distressing situation, the former tending to become simple peons, and the latter to become beggars, while thousands of families become *agregados* or, that is, serfs lacking all rights or control over the piece of land that encloses their homes, while the product of the work of the vast majority of the proletariat is converted for the most part into absentee capital, instead of being converted into purchasing power for the people. This situation affects the economic structure of the Island and brings about such material abject poverty and moral degradation that the adoption of an agrarian policy that will result in a greater and more equitable distribution of the natural wealth of the country and in a greater economic freedom and dignity for the inhabitants of the rural districts, has become imperative. [Appendix, p. 26.]

Nor is the problem one of recent origin. Congress early recognized the serious agrarian problem existing in Puerto Rico. As set forth in the Statement of Motives prefacing the Land Law:

> The Congressional debates in the year 1900 * * * reveal the foresight of those members of Congress who expressed fear that free trade between Puerto Rico and the United States would make the

> Island too attractive for the investment of large amounts of capital in sugar and tobacco, with the probable result of placing most if not all of the tillable soil of the Island under the ownership and control of the sugar and tobacco trusts. This fear was intensified by the fact that the year before, in 1899, the Island had been devastated by a cyclone, with the consequent loss of crops, and depreciation and mortgaging of its best lands. To prevent the development of an agrarian monopoly which would own and control the best lands of this small and densely populated Island and which might eventually convert the Island into a large sugar factory, served by a half-slave proletariat, and to encourage the division of lands into small tracts, owned, controlled and cultivated by their owners, the Congress enacted Joint Resolution No. 23, approved May 1, 1900.[9]

The Joint Resolution contained the so-called "500-Acre Law," by which corporations thereafter "authorized to engaged in agriculture"

[9] At 33 Cong. Rec. 4619, Representative Jones of Virginia stated: "Unless these amendments are adopted I believe that it is almost certain that within the shortest period possible * * * the great corporations of this country will own every single acre of the sugar and tobacco lands of this fertile island. And if that shall become the case, then the condition of the population will, I believe, be reduced to one of absolute servitude. The people of Porto Rico will be driven to cultivate these lands for these corporations at whatever daily wage they choose to pay them."

were restricted to the ownership and control of not to exceed 500 acres of land.[10] The present statute implements the Congressional policy by preventing accumulation of excessive acreage by trusts which are very similar to corporations.

The impoverished conditions in Puerto Rico leading to the passage of the Land Law in 1941 pertained with possibly even greater severity on the Island of Vieques when the Vieques Act was passed by the Puerto Rican Legislature in 1944. The Statement of Motives prefacing that Act shows that there were formerly five centrals (i. e., sugar mills) engaged in the processing of sugar on Vieques, but these gradually decreased in number until the last one "disappeared when the lands on which it was located were acquired by condemnation proceedings" by the United States Navy. "As a result of this action by order of the Government of the United States and the acquisition by it of more than 20,000 cuerdas of land on * * * Vieques, the sugar industry of Vieques was paralyzed, and the 11,000 inhabitants

[10] Of this prohibition this Court said in *Puerto Rico* v. *Rubert Co.*, 309 U. S. 543, 548: "Surely nothing more immediately touches the local concern of Puerto Rico than legislation giving effect to the Congressional restriction on corporate land holdings. This policy was born of the special needs of a congested population largely dependent upon the land for its livelihood. It was enunciated as soon as Congress became responsible for the welfare of the Island's people, was retained against vigorous attempts to modify it, and was reaffirmed when Congress enlarged Puerto Rico's powers of self-government."

of said island plus the 1,000 inhabitants of the Island of Culebra were left without any industry whatever on which to depend for their happiness and subsistence." It was concluded that the renewal of the activities of the sugar industry and the development of the liquor industry were the only remedies for the economic rehabilitation of Vieques and Culebra. (Appendix, pp. 35–36.)

In view of conditions leading to the enactment of the Land Law of Puerto Rico and the Vieques Act,[11] it is submitted that the court below was clearly correct in holding "that the Puerto Rican Legislature's belief in the existence of a serious economic and social problem was not arbitrary, and that the program to provide not only homesteads and proportional profit farms for *agregados* and subsistence farms for more skilled farmers, on the Island of Puerto Rico proper, but, in addition to the foregoing, to provide for the renewal of sugar cane grinding and

[11] As the court below observed (R. 99), it is settled law that local conditions are of paramount importance in determining what is a public use. The question as to what constitutes a public use "has been influenced in the different States by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people. In all these respects conditions vary so much in the States and Territories of the Union that different results might well be expected." *Hairston* v. *Danville and Western Ry. Co.*, 208 U. S. 598, 606; *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527, 531; *Clark* v. *Nash*, 198 U. S. 361, 367 *et seq.*; *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 160; cf. *Green* v. *Frazier*, 253 U. S. 233, 242–243.

the development of the liquor industry on the Island of Vieques, embodied means reasonably calculated to deal with these problems" (R. 101).

Contrary to petitioner's argument (Pet. 18), the court below not only was justified but was required to consider the entire program as an integrated undertaking. *United States ex rel. Tennessee Valley Authority* v. *Welch,* Nos. 528–553, Oct. T. 1945, pp. 4–5, of the slip opinion.[12] We submit that the overall program to relieve distress among needy farmers, to provide an effective method for the breaking up of *latifundia* and to provide relief for the inhabitants of Vieques was a public one and that the proposed taking of petitioner's land was a taking for public use.[13]

[12] The court below held (R. 98):

"The four contemplated uses for the land enumerated above are closely inter-related. Each use plays a part in a comprehensive program of social and economic reform. Thus we see no basis for analyzing each proposed use separately. Instead we think the entire legislation should be regarded 'as a single integrated effort,' (*United States ex rel. Tennessee Valley Authority* v. *Welch*, *supra*, p. 5 of the slip opinion) to improve conditions on the island, and so viewed we think enactment of the statutes within the power of the Insular Legislature."

[13] Petitioner also contends that this Court should grant certiorari to clarify the doubts alleged to exist as a result of this Court's decision in *United States ex rel. T. V. A.* v. *Welch*, *supra*, as to whether there can be judicial review of a legislative determination that a taking is for public use (Pet. 8, 9, 12, 20–21). Even assuming that such doubts exist and that review be desirable, the instant case does not offer a proper vehicle for that purpose as the court below judicially reviewed the legislative declaration and concluded that the intended use was a public one.

The fact that the land so acquired was not to be open to the use of the public at large does not make the taking any the less one for public use. *Mt. Vernon Cotton Co.* v. *Alabama Power Co.*, 240 U. S. 30, 32; *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527, 531; *Clark* v. *Nash*, 198 U. S. 361, 367 *et seq.*; *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 162; see *Keyes* v. *United States*, 73 App. D. C. 273, 119 F. 2d 444, certiorari denied, 314 U. S. 636 (low-cost housing project); *Matter of N. Y. City Housing Authority* v. *Muller*, 270 N. Y. 333 (same).[14]

(b) Even were it less clear that the taking here involved is for a public use, the legislative determination to that effect should prevail.

The court below held in accordance with "clearly established" law that it was not "concerned with the wisdom, expediency or even directly with the necessity of the uses for which the land is proposed to be taken" (R. 98). As this Court stated in *Rindge Co.* v. *Los Angeles*, 262 U. S. 700, 709, "The necessity for appropriating private property for public use is not a judi-

[14] The cases upon which petitioner mainly relies do not support an opposite conclusion. *Hairston* v. *Danville and Western Ry. Co.*, 208 U. S. 598, upheld, in the widest sense, the state court's determination of what constituted a public use. *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, involved a regulatory measure and not a taking, and this Court held that the order there involved did not tend to promote the purposes for which the regulation had been provided. Cf. *United States* v. *Rock Royal Co-Op.*, 307 U. S. 533, 573.

cial question. This power resides in the legislature, and may either be exercised by the legislature or delegated by it to public officers." See *United States ex rel. Tennessee Valley Authority* v. *Welch, supra,* pp. 4–5; *Old Dominion Co.* v. *United States,* 269 U. S. 55, 66.

It is also well established in condemnation proceedings that "when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation." *United States* v. *Gettysburg Electric Railway Co.,* 160 U. S. 668, 680. In another condemnation case, *Old Dominion Co.* v. *United States,* 269 U. S. 55, 66, cited recently with approval by this Court in *United States ex rel. Tennessee Valley Authority* v. *Welch, supra,* p. 5 of slip opinion, and relied upon by the court below (R. 99), it was stated by Mr. Justice Holmes that where "Congress has declared the purpose to be a public use, by implication if not by express words * * * its decision is entitled to deference until it is shown to involve an impossibility." The Legislature of Puerto Rico is entitled to the same deference within the sphere of its jurisdiction. It is submitted that it would be improper to hold in this case, merely on the basis of the pleadings, that the decision by the legislature that the taking of the land here involved was for a public use was "palpably

without reasonable foundation" and involved "an impossibility."

In the light of the foregoing we submit that the court below correctly concluded that the taking here involved was for a public use, and that its conclusion was amply supported, not only by matters of record but by the controlling decisions of this Court.

2. The court below correctly held, contrary to petitioner's contention (Pet. 8, 9–10, 12, 21–22), that the Land Authority of Puerto Rico is not prohibited by the "500-Acre Law", 31 Stat. 715, 716, 39 Stat. 951, 964, 48 U. S. C. 752 (Appendix, pp. 19–21), from taking title to more than 500 acres of land (R. 101–102). Plainly the Land Authority, created by Section 2 of the Act, is a "governmental agency or instrumentality of The People of Puerto Rico", administered by a board composed of the Commissioner of Agriculture and Commerce, the Commissioner of Labor, the Commissioner of the Interior, and four other members appointed by the Governor with the consent of the Insular Senate (Appendix, p. 28). The Land Authority was "created for the purpose of carrying out the agricultural policy of The People of Puerto Rico" (Appendix, p. 28), and it is explicitly authorized by Section 8 (h) of the Land Law to hold land in excess of 500 acres (Appendix, p. 30).

Clearly, as the court below held, even assuming

the Land Authority were a corporation, the prohibition of the "500-Acre Law" was "not intended to apply to governmental corporations created by the Insular Legislature to carry on a public function, but was intended to be limited in its application to private business corporations chartered by the insular government to engage in agriculture for profit" (R. 102).

CONCLUSION

The decision of the court below is clearly correct and in full accord with the decisions of this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1946.

APPENDIX

Section 3 of the Joint Resolution of May 1, 1900, No. 23, 31 Stat. 715, 716, provides:

> That all franchises, privileges or concessions granted under section thirty-two of said Act shall provide that the same shall be subject to amendment, alteration, or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends; and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for

the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

Section 39 of the Puerto Rican Organic Act, c. 145, 39 Stat. 951, 964, 48 U. S. C. 752, provides:

That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or

individuals in holdings in excess of five hundred acres.

The Land Law of Puerto Rico, Act No. 26, approved April 12, 1941 (Laws of Puerto Rico, 1941, pp. 388 *et seq.*), provides in part as follows:

STATEMENT OF MOTIVES

The Legislature of Puerto Rico, by the present declaration and through the instrumentality of this Act, states that the land in Puerto Rico is to be considered as a source of life, dignity and economic freedom for the men and women who till it, and it is declared that it is the policy of The People of Puerto Rico that finally each person who tills the land shall be the owner of that land which supports him.

By a resolution of the Supreme Court of Puerto Rico which was confirmed by the Supreme Court of the United States March 25, 1940, the following historical facts were made the object of judicial declaration:

"Puerto Rico has a total area of 3,435 square miles, equivalent to 2,198,400 acres, of which 1,222,284 are tillable. The population of the Island in 1898, when Puerto Rico was ceded to the United States, was 953,243 souls. The total area of land devoted to the cultivation of sugar cane was at that time 70,000 acres.

"The Congressional debates in the year 1900, during the discussion of the bill to impose 25% of the Dingley Tariff on all goods imported from Puerto Rico into the United States and vice versa and of the Organic Act (Foraker Law) for the establishment of a civil government in Puerto Rico, reveal the foresight of those mem-

bers of Congress who expressed fear that free trade between Puerto Rico and the United States would make the Island too attractive for the investment of large amounts of capital in sugar and tobacco, with the probable result of placing most if not all of the tillable soil of the Island under the ownership and control of the sugar and tobacco trusts. This fear was intensified by the fact that the year before, in 1899, the Island had been devastated by a cyclone, with the consequent loss of crops, and depreciation and mortgaging of its best lands. To prevent the development of an agrarian monopoly which would own and control the best lands of this small and densely populated island and which might eventually convert the Island into a large sugar factory, served by a half-slave proletariat, and to encourage the division of lands into small tracts, owned, controlled and cultivated by their owners, the Congress enacted Joint Resolution No. 23, approved May 1, 1900."

As declared by the Supreme Court of Puerto Rico in regard to the land problem in this Island, "parliaments have considered it their duty to protect their subjects and citizens against attempts by large combinations of capital to monopolize the lands adapted to agriculture, which are the basic source of wealth of any community."

The Supreme Court of Puerto Rico has likewise declared that "the wisdom and foresight of the sponsors of the insular agrarian policy", embodied in the Federal Act which limits corporative land holding to five hundred acres, "has been demonstrated by the subsequent events. Puerto

Rico, whose density of population in 1900 attracted the attention of Congress, has since then almost doubled the number of its inhabitants, the census of 1935 taken by the Puerto Rico Reconstruction Administration, a federal agency, showing that the Island had on that date a population of 1,723,534 inhabitants, or an average of 501 persons per square mile; that 72.3 per cent of said population live in the rural zone and depend entirely on agricultural activities for their subsistence; that the Island has an average of something less than one acre of tillable land per rural inhabitant; that there are 251,000 acres, that is one-fifth of all the lands adapted to agriculture, used for the production of sugar cane; that no less than 196,757 acres, or something more than 70 per cent of the total acreage planted to sugar cane, are owned or controlled by companies which in turn are controlled almost exclusively by absentee stockholders; that the companies so organized and controlled produce, normally, 59 per cent of the total sugar output of the Island, thus controlling almost 40 per cent of the total insular agricultural wealth, and that during the decade from 1920 to 1930 the combined acreage of all the rural estates managed by their owners was decreased by 318,232 acres, while the total acreage operated under strange management was increased by about 325,425 acres." The Supreme Court of Puerto Rico adds: "that the existence of large land holdings in a small agricultural country, abnormally over-populated and without basic industries other than those required for the preparation of agricultural products for the market, is contrary to the economic welfare of its people."

In connection with the federal statute which limits to five hundred the number of acres which may be held in Puerto Rico by corporations engaged in agriculture, the Supreme Court of this Island has declared that: "the end sought by the statute is to prevent the monopolizing of the tillable land of this small Island of 3,435 square miles by a small number of corporations, and to protect its population of 1,700,000 souls against a monopoly which would end by making them the mere serfs of a huge sugar factory."

The Supreme Court of Puerto Rico has also declared that, "In constituting the Island of Puerto Rico into an organized territory, Congress thought that, in view of its territorial extent, its lands might be monopolized by one or more powerful corporations and, considering that this result might be harmful to its future development, it fixed its policy on the matter by prescribing a limitation on the powers of the new-born Legislature, which was to have charge of the enactment of laws respecting corporations. . . . If the manufacturing business is separated from the agricultural business, it is possible to conceive the establishment of corporations which will erect and operate great factories for the extraction of sugar from cane, grown independently by tens or hundreds of individuals or corporations engaged in this work upon their directly managed lands, thereby increasing business activity and multiplying the number of efficient, self-supporting citizens and families which, in well-organized communities, constitutes the safest and most stable foundation for a normal and orderly progressive life."

On March 25, 1940, the Supreme Court of the United States declared: "Surely nothing more immediately touches the local concern of Puerto Rico than legislation giving effect to the Congressional restriction on corporate land holdings. This policy was born of the special needs of a congested population largely dependent upon the land for its livelihood. It was enunciated as soon as Congress became responsible for the welfare of the Island's people, was retained against vigorous attempts to modify it, and was reaffirmed when Congress enlarged Puerto Rico's powers of self-government. Surely Congress meant its action to have significance beyond mere empty words."

It is common knowledge that the greater part of the best tillable land of the Island is controlled by a few partnerships and corporations and by a scant number of natural persons. The lives of hundreds of thousands of human beings, in their social, moral and political phases, depend in a great measure on the entities who monopolize the land. The economic power of such entities threatens to dominate the political power of the people, thereby tending to transform into a plutocracy of a marked feudal character, what should be a pure democracy. The sugar latifundia has spread its tentacles, within the vast area of its dominions, to the operation of commercial and industrial establishments, and of grocery and general stores; has limited the circulation of money, has caused the annihilation of communal life in many urban centers, and has made it impossible for thousands of human beings to be the owners of even the lot where their

homes are situated, all to the consequent unbalancing of the economic structure of the Island and to the grave endangering of the peace, the tranquility, the dignity, and the economic and social freedom of the people of Puerto Rico.

It is evident therefore that land concentration has caused in this Island a serious social situation by placing the most valuable source of wealth under the control of large interests, among which absentee interests are conspicuous. The great masses of farmers and laborers are experiencing a distressing situation, the former tending to become simple peons, and the latter to become beggars, while thousands of families become *agregados* or, that is, serfs lacking all rights or control over the piece of land that encloses their homes, while the product of the work of the vast majority of the proletariat is converted for the most part into absentee capital, instead of being converted into purchasing power for the people. This situation affects the economic structure of the Island and brings about such material abject poverty and moral degradation that the adoption of an agrarian policy that will result in a greater and more equitable distribution of the natural wealth of the country and in a greater economic freedom and dignity for the inhabitants of the rural districts, has become imperative.

It is a fundamental purpose of this Act to put an end to corporate latifundia and to every large concentration of land in the hands of entities legally organized in such wise as to tend to perpetuate themselves and to prevent for all time the division of the great landed estates; and it is likewise the purpose to prevent the reappearance of

such latifundia in the future. To win these objectives it is absolutely necessary, as a fundamental agrarian policy of The People of Puerto Rico, to extend the limitation on land holdings, set at five hundred acres, to every organization or partnership of a corporative character, to the end of preventing that through other juridical instrumentalities the purpose sought by this legislation be frustrated.

This fundamental public policy would not be complete if it were not accompanied by, as a corollary germane to its nature and scope, of the purpose of providing that in the case of land where, for natural or economic reasons, the division of the land is not advisable from a standpoint of efficiency, the greatest diffusion possible of the economic benefits of the land may still be effected, thereby contributing to raise substantially the standard of living of the greatest possible number of families. It is with a view to this phase of the legislative purpose that it is considered indispensable to make provision for the creation of proportional-profit farms through which the diffusion of the wealth may be effected, to the point efficiency makes advisable, without the parceling of the land. It is also an integral part of the moral purpose and the aims of dignity and economic freedom embodied in the public policy of the Legislature, to furnish the means whereby the social class of *agregados,* or, that is, of agricultural laborers enslaven through the fact that they are not the owners of even the lot where they have their homes, will disappear from Puerto Rico; and to that end the Legislature states the fundamental human right of all the human beings who live exclusively by the tilling of the soil, to be

the owners of at least a piece of that land which they may use to erect thereon, in the full enjoyment of the inviolability guaranteed by law for the homestead of the citizen, their own homes, thereby delivering them from coercion and leaving them free to sell their labor through fair and equitable bargaining.

* * * * *

SECTION 2.—A board which shall be of the nature of a governmental agency or instrumentality of The People of Puerto Rico is hereby created in the Department of Agriculture and Commerce under the name of *Land Authority of Puerto Rico,* which in this Act shall be referred to as *the Authority,* and which shall be composed of the Commissioner of Agriculture and Commerce, who shall be the chairman thereof, the Commissioner of Labor, the Commissioner of the Interior and four (4) citizens who profess belief in the wisdom and urgency of this Act. These last four members shall be appointed by the Governor of Puerto Rico by and with the advice and consent of the Senate for a term of four (4) years and until their successors have been duly appointed and have qualified. Four members of the Authority shall constitute a quorum.

* * * * *

SECTION 7.—(*As amended by Act No. 197, approved May 11, 1942.*) The Authority is created for the purpose of carrying out the agricultural policy of The People of Puerto Rico as determined in this Act, and to take the necessary action to put an end to the existing corporative latifundia in this Island, block its reappearance in the future, insure to individ-

uals the conservation of their land, assist in the creation of new landowners, facilitate the utilization of land for the best public benefit under efficient and economic production plans; provide the means for the *agregados* and slum dwellers to acquire parcels of land on which to build their homes, and to take all action leading to the most scientific, economic and efficient enjoyment of land by the people of Puerto Rico; *Provided,* That none of the provisions of this Act are to be construed as limiting the right of the Land Authority of Puerto Rico or of the organizations, entities, or agents created or authorized by it to carry out the purposes mentioned in the preceding paragraph to hold, control, possess, use and develop agricultural lands with an area in excess of 500 acres.

SECTION 8.—The Land Authority shall have juridical personality and it is hereby vested with, and it shall have and be able to exercise, all the rights and powers necessary or advisable to carry out the purposes mentioned, including, but without limitation of the scope of such purposes, the following:

(a) To have succession in perpetuity;

* * * * *

(c) To draft, adopt, amend, and repeal rules and regulations to govern the policies of its activities in general and to exercise and discharge the powers and duties granted to and imposed on it by law, and upon the approval of said rules and regulations by the Governor and their due promulgation by the Executive Secretary of Puerto Rico they shall have the force of law;

(d) To sue and be sued; accuse and be accused; complain and defend itself in all the courts;

(e) To have full powers to enforce the agricultural policy of The People of Puerto Rico as herein established;

* * * * *

(g) To acquire land by purchase, cession, transfer, exchange, lease, inheritance, donation, or by the exercise of the power of expropriation in the manner provided by this Act and the Laws of Puerto Rico and to retain, conserve and exploit any agricultural enterprise in the manner provided for in this Act;

(h) To hold, possess, or control in any legal manner or under any title, for the time it may consider necessary within the purposes of this Act, land in excess of five hundred (500) acres;

* * * * *

(j) To purchase, lease as lessee, or otherwise acquire and possess, as well as use, land or any estate thereon which it may consider necessary or advisable to carry out the purposes of the Authority, and to sell, transfer, exchange or lease said land or any part thereof for the purposes and in the manner provided in this Act;

* * * * *

SECTION 11.—The Insular Government shall have power to acquire, at the request of the Authority and in behalf thereof, by purchase, or by expropriation in the manner provided by this Act and Insular laws in regard to expropriation, title to any real property or estate thereon which might be necessary or advisable for the purposes of the Authority, and the latter shall pay for the whole of said real property. The power

hereby vested shall not limit or restrict the power of the Authority itself to acquire real property by purchase or expropriation.

SECTION 11-a.—(*As added by Act No. 8, approved November 20, 1942.*) For the ends and purposes of Section 11 of this Act, all works and projects carried out by the Land Authority of Puerto Rico pursuant to the provisiions hereof, and all the real and personal property and every right or interest in the property thereof, necessary for the purposes stated, which it may acquire by condemnation proceedings, whether the proceedings are instituted by The People of Puerto Rico or Insular Government, or by the Land Authority directly, are declared of public utility, and said real or personal property and any right or interest therein, may be condemned without a prior declaration of public utility as provided in Section 2 of the Act authorizing the condemnation of private property, as the same may have been or may be amended.

* * * * *

SECTION 14.—In harmony with what is expressed in the Statement of Motives of this Act, the Legislature of Puerto Rico declares that the development of corporative latifundium in Puerto Rico has created a state of emergency which requires the immediate rescue of the lands from those artificial persons that monopolize them, and demands the end of the dominion, possession, or control of the lands by such persons, as these are defined in Title III of this Act, as an undeferable necessity which fundamentally affects the welfare of the inhabitants of Puerto Rico. For the purpose of carrying out this declaration and of making it quickly effective, there is conferred on the Land Authority of Puerto Rico for a pe-

riod of five (5) years counting from the date on which this Act takes effect, the power of expropriation for the purposes herein determined. For such purpose, the Authority can acquire lands through judicial proceedings, using therefor, when it considers it necessary and advantageous, the power of expropriation: *Provided,* That the Authority can exercise said power of expropriation only against artificial persons which, by possessing more than five hundred acres, are violating the provisions of this Act, and such power of expropriation shall not be exercised against natural persons unless the lands in question belonged, on February 10, 1941, to some artificial person as defined in said Title III.

* * * * *

SECTION 25.—(*As amended by Act No. 157, approved May 14, 1943.*) Upon the acquisition of any extension of land the Authority shall divide this land into individual holdings having an area of not less than five (5) acres nor more than twenty-five (25) acres each, or into proportional-profit farms, as defined and authorized under Title IV of this Act. This division shall be made in accordance with the nature of the land, local conditions, and any other factors which the Authority may consider pertinent. The Authority shall fix the terms and conditions for the payment of the sales installments, cession, rental fees, interest, and any other payment which may have to be made in regard to the land sold, alienated, transferred, ceded or leased to individuals, agricultural cooperatives, or proportional-profit farms, in accordance with the provisions of this Act. Such payments shall be spread over a period of forty (40) years; *Provided,* That the payment for a

property by the purchaser may be completed at any time before forty (40) years, at the will of the purchaser.

* * * * *

SECTION 57.—(*As amended by Act No. 197, approved May 11, 1942.*) For the purposes of this Act, the term "artificial person" shall refer to private corporations, limited companies, societies, partnerships, joint-stock companies, voluntary associations (including community partnerships), business trusts, Massachusetts trusts, common law trusts, and any other form of corporate organization, or any other organization, partnership or entity created for the purpose of carrying out transactions or attaining specific objectives, which continue to exist regardless of the changes made among its members or among the persons participating in them, and whose affairs are managed either by one person only, or by a committee, a board, or any other group of individuals acting in a representative capacity, and any other association which is an artificial person. The term "corporation" or "association" shall include any association or organization, or corporative association or organization already incorporated, organized or constituted in any State of the United States, a foreign nation or Puerto Rico. The term "artificial person" shall include all associations, regardless of the form, kind, denomination, character or nature, and all cooperatives, except proportional-profit farms as described, established and authorized by this Act.

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SECTION 58.—(*As amended by Act No. 160, approved May 14, 1943.*) The acquisition, holding, or any other form of direct or

indirect control of land in excess of five hundred (500) acres by any artificial person, as said term is defined in this Act, is hereby declared unlawful. * * *

* * * * *

SECTION 64.—(*As amended by Act No. 197, approved May 11, 1942.*) The Authority shall be empowered to lease lands in parcels of from one hundred (100) to five hundred (500) acres to farmers, agronomists or other persons with experience in agricultural management who meet the qualifications hereinafter prescribed, in farms to be known as "proportional-profit farms." * * *

* * * * *

SECTION 74.—(*As amended by Act No. 158, approved May 14, 1943.*) In order to promote the welfare and economic freedom of, and do social justice to, *agregados*, as they are defined in Section 78 of this Act, and in accordance with the Statement of Motives hereof, it is hereby declared that the purposes of this Title is that every *agregado* shall at least be entitled to hold the fourth part of a cuerda of land (*cuadro*) on which he may permanently erect his house.

The Authority shall investigate the most fitting places located alongside or near the insular and municipal roads already constructed or that may be constructed for the traffic of rolling vehicles, or near population centers, second rural units and/or medical centers. The purpose of such investigation shall be to determine the places that can be divided into parcels of not less than one-fourth of a cuerda (*cuadro*) nor more than three cuerdas of land, to be distributed among those *agregado* families, as

said term is defined in this Act, who may wish to own such parcels to erect their homes. Said places shall be so chosen that, upon completion of the plan, they will be situated at a distance of not more than five (5) kilometers from each other and shall be adequate for division into not less than twenty-five (25) nor more than five hundred (500) parcels. Said lands shall be acquired by the Authority by expropriation proceedings in accordance with Section 11 of this Act, or through direct negotiations with the owners thereof.

* * * * *

SECTION 76.—(*As amended by Act No. 197, approved May 11, 1942.*) The Authority shall cede gratuitously to any *agregado* who may so request, a parcel having an area of one-fourth of a cuerda (*cuadro*) of land in said places, but such *agregado* may acquire a cuerda by paying the difference according to such installments and conditions as shall be fixed by the Authority; * * *

The Vieques Act, Act No. 90, approved May 11, 1944 (Laws of Puerto Rico, 1944, p. 196 *et seq.*), provides in part as follows:

STATEMENT OF MOTIVES

The islands of Vieques and Culebra have a population of 11,000 and 1,000 inhabitants, respectively, who have depended strictly on the sugar industry in the Island of Vieques for their happiness. There were five centrals engaged in the processing of sugar in the Island of Vieques, but with the lapse of time some of them were absorbed by others until only the Central Playa Grande remained, and this latter dis-

appeared when the lands on which it was located were acquired by condemnation proceedings by the Navy Department of the Government of the United States of America. As a result of this action by order of the Government of the United States and the acquisition by it of more than 20,000 cuerdas of land on said Island of Vieques, the sugar industry of Vieques was paralyzed, and the 11,000 inhabitants of said island plus the 1,000 inhabitants of the Island of Culebra were left without any industry whatever on which to depend for their happiness and subsistence. Various special commissions appointed by the Governor of Puerto Rico and by the House of Representatives of Puerto Rico have made surveys of the Island of Vieques and of the manner of solving those problems, and in all of them the conclusion has been reached that the renewal of the activities of the sugar industry is the only remedy for the economic rehabilitation of said islands.

The commission designated by the House of Representatives of Puerto Rico to investigate the economic conditions of Vieques has found that another means for solving the economic crisis of Vieques and Culebra would be by establishing an alcohol distillery, operated by the Government of Puerto Rico. Due to the lack of private capital sufficient to undertake these enterprises in the Island of Vieques and due to the urgency of attending to the inhabitants of these islands in solving their problems drastically and immediately, the Legislature of Puerto Rico, understanding the urgency of this problem and through its corresponding agencies, wishes to give, and by this Act gives, the help that the

inhabitants of said islands merit, and for these purposes this Act is introduced.

Be it enacted by the Legislature of Puerto Rico:

SECTION 1.—The Land Authority is directed and empowered to acquire, through purchase or condemnation proceedings, or in any other form or by any other means compatible with the laws of Puerto Rico, the lands belonging to the Eastern Sugar Associates in the Island of Vieques, as well as any other lands in the Island of Vieques, Puerto Rico, that may be necessary, in the judgment of the Land Authority of Puerto Rico, to carry out the provisions of this Act.

SECTION 2.—As soon as the Land Authority acquires these lands from the Eastern Sugar Associates, it shall establish the consequent organization of the same and shall devote them principally to the planting of sugar cane and of any other products that may be necessary to develop in Vieques the sugar industry and the liquor industry.

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